

ADVISORY OPINION 98-011

Any advisory opinion rendered by the Registry under subsections (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

August 16, 1998

Mr. Tim Cansler
Division of National Affairs and Political Education
Kentucky Farm Bureau Federation
9201 Bunsen Parkway
P.O. Box 20700
Louisville, KY 40250-0700

Dear Mr. Cansler:

This is in response to your letter dated July 16, 1998, requesting an advisory opinion regarding the following issues: (1) the formation of a political issues committee; (2) limits on start-up contributions to an issues committee from a corporate-parent organization; and (3) an interpretation of KRS 121.035(3) regarding corporate contributions in support of a constitutional amendment. Your letter explains that the Kentucky Farm Bureau Federation ("KFBF"), an incorporated, tax exempt, 501(c)(5) organization, may want to establish an issues committee to support or oppose two (2) constitutional amendments on the ballot in the 1998 general election.

Corporations, even non-profit and tax-exempt corporate entities, have traditionally been precluded from participating in the election process, both at the federal and state level. Section 150 of the Kentucky Constitution forbids corporations from influencing any Kentucky Election and directs the General Assembly to enact statutes necessary to enforce this provision. See KRS 121.025, KRS 121.035.

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However, KRS 121.035(3) recognizes an exemption for corporate contributions in support of constitutional amendments or public questions. KRS 121.135(3) provides in pertinent part, that “[n]othing in this section shall be construed to prohibit a corporation from making contributions in support of a constitutional amendment, a public question which appears on the ballot, or position on an issue of public importance.” This exemption recognizes that, pursuant to the United States Supreme Court, corporations are protected by the First Amendment to the Constitution. See First National Bank of Boston v. Belotti, 435 U.S. 765 (1978). In Belotti, the Court held that a Massachusetts penal statute which prohibited corporate contributions or expenditures for the purpose of influencing votes regarding public questions was unconstitutional. Id. at 776. The Court held that corporate speech, in the form of expenditures to publicize their views on public questions subject to referendum, constitutes core First Amendment speech. Id. Therefore, under KRS 121.035(3), a corporation may make contributions in support of a constitutional amendment.

In addition, United States Supreme Court cases distinguishing issue advocacy from express advocacy led to statutory changes during the 1996 Regular Session of the Kentucky General Assembly. In Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981), the Court held that the First Amendment right of association and freedom of speech prohibits limits on contributions to committees supporting a public issue subject to referendum. The Court interpreted its former decision in Buckley v. Valeo, 424 U.S. 1 (1976) to permit state limits on contributions for “[t]he sole governmental interest. . .[of] the prevention of quid pro quo corruption between a contributor and a candidate.” Berkeley, 454 U.S. at 297 (citing Let’s Help Florida v. McCrary, 621 F.2d 195, 199 (1980)). Both in Buckley and Berkeley, the Court has distinguished express advocacy, or speech which expressly advocates the election or defeat of a clearly identified candidate or candidates, from issue advocacy. The Berkeley decision held that “there is no significant state or public interest in curtailing debate and discussion of a ballot measure” and, therefore, a contribution limit on the issue advocacy “plainly impairs freedom of expression.” Id. at 299. Therefore, under KRS Chapter 121, pursuant to changes enacted during the 1996 Regular Session, political issues committees are distinguished from permanent committees, which have as their primary purpose the express advocacy of the election or defeat of one (1) or more clearly identified candidates.

However, the 1996 changes did not affect KRS 121.150(6), which imposes a contribution limit of one-thousand dollars (\$1,000) to a candidate, campaign committee, or **political issues committee**. Based on the foregoing, specifically the United States Supreme Court decision in Citizens Against Rent Control v. Berkeley, *supra*, the

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\$1,000.00 contribution limit contained in KRS 121.150(6) cannot be applied to political issues committees.

Therefore, the KFBF may form a political issues committee to support or oppose constitutional amendments on the ballot in the 1998 general election. Further, there is no enforceable limit on the contributions the KFBF may make to such a committee. If you have any further questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/db